



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

LNO/172939

PRELIMINARY RECITALS

Pursuant to a petition filed March 16, 2016, under Wis. Admin. Code, §DCF 201.07(1)(e), to review a decision by the Public Assistance Collection Unit (PACU) to issue a notice of warrant regarding a child care assistance overpayment, a hearing was held on May 11, 2016, at La Crosse, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether the Division of Hearings and Appeals can prevent a warrant or other collection action against petitioner.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED]

La Crosse County Dept. of Human Services
P.O. Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. On November 24, 2014 La Crosse County Human Services sent petitioner a notice informing him that he was overpaid \$18,767 in child care assistance. Petitioner appealed, and in a decision dated April 2, 2015, the Division of Hearings and Appeals found that the appeal of the child care claim was untimely. The Administrative Law Judge also upheld claims for Medical Assistance (MA)

and FoodShare (FS). See DHA case nos. FOP-163259, MOP-163260, and CCO-163261. Petitioner appealed the decisions; the Circuit Court has not decided the appeal yet.

3. In December, 2014, the county agency sent repayment agreements to petitioner at a [REDACTED] address in [REDACTED].
4. The county agency sent three dunning notices regarding the child care overpayment to petitioner at his current address on January 5, May 4, and June 2, 2015.
5. The PACU instituted a levy proceeding concerning the child care overpayment against petitioner in September, 2015. It appears that the notice for that action was sent to the [REDACTED] address, and the levy was completed.
6. On February 27, 2016 the PACU sent petitioner, at his current address, a notice of a warrant docketed in La Crosse County with regard to the remainder of the child care overpayment claim. Petitioner filed this appeal.

DISCUSSION

Where an individual is subject to a specified overpayment of public assistance (for example, as in this case relating to child care assistance) a county, tribal governing body, W-2 agency, or the department may recover an overpayment by more than one method of collection at the same time. Wis. Stat., §49.195(3p); Wis. Admin. Code, §DCF 101.23(4). One method of collection that the department may utilize is the use of a warrant under Wis. Stat., §49.195 (3m). Wis. Admin. Code, §DCF 101.23(9)(a) provides as follows: “1. If a debt for repayment of an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats., is delinquent under sub. (8) and no review or appeal rights under sub. (2) are pending and the time for requesting a review has expired, the department may issue a warrant directed to the clerk of circuit court of any county.” The administrative code language echoes the language of Wis. Stat., §49.195(3m).

I note that subsection (2) specifically refers to administrative fact finding reviews and fair hearings; the code does not prevent the agency from using a warrant while a Circuit court appeal is pending. There is no claim that the Circuit Court stayed enforcement of the claim.

Any debtor who is subject to a warrant has the right to appeal the proceeding under chapter 227 of the Wisconsin Statutes. The appeal is limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. Wis. Admin. Code, §DCF 101.23(9)(a)5. The warrant is not withdrawn pending an appeal. Id.

The warrant issued against petitioner is only for the child care overpayment claim. See the February 27, 2016 notice, which refers only to AFDC, child care, and Wisconsin Works (W-2); it does not refer to MA or FS, which are programs operated by the Department of Health Services, not the Department of Children and Families.

At the hearing petitioner also mentioned the levy that took place in September, 2015. Because Mr. [REDACTED] was prepared only with regard to the child care claim, he presented as exhibits only the child care notices and the decision regarding child care. Because Mr. [REDACTED] sent information regarding the other two programs, I researched and found the other two decisions regarding those programs and cited them in Finding of Fact no. 2.

Although Mr. [REDACTED] sent information about MA and FS, the levy, like the warrant, covers only the child care overpayment. The authority to impose a levy also is found in Wis. Admin. Code, §DCF 101.23, but at subsection (10) instead of (9). The provision at §DCF 101.23(10)(e) has the same limitation for an

appeal of a levy notice as for a warrant notice: “The appeal shall be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor.”

The specific issue appealed in this case is the issuance of the warrant. The only issues I can address are whether petitioner is the correct person, or whether he has paid the claim. Petitioner is the person who was found to be liable by the county agency as upheld by the Division of Hearings and Appeals. He does not claim that he paid the child care overpayment. (I note that it appears that the child’s mother also is liable, but obviously only petitioner’s interest is at issue here.)

With regard to the levy, technically it is not before me because petitioner did not appeal the levy to the Division of Hearings and Appeals. He argues that the levy was a violation of due process because the notice apparently was sent to the [REDACTED] address at which petitioner does not live. However, had the notice been sent to petitioner’s current address, and had petitioner appealed to this office, the result would have been the same. The only issues in a levy appeal are identity and prior payment. This office would have found against petitioner on both bases, just like I am doing in the warrant appeal.

Clearly petitioner’s only remaining avenue is the Circuit Court appeal. There is no basis for this office to rescind the notice of warrant.

CONCLUSIONS OF LAW

Petitioner’s appeal of the PACU’s warrant is limited to questions of prior payment and mistaken identity, and he has established no basis for remand or rescission of the warrant.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 17th day of May, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 17, 2016.

La Crosse County Department of Human Services
Public Assistance Collection Unit
Attorney [REDACTED] [REDACTED]